

Summary of the 1999 Sales and Compensating Use Tax Budget Legislation

On August 9, 1999, Governor George E. Pataki signed Chapter 407 of the Laws of 1999. This memorandum summarizes amendments to the Tax Law that are applicable to the State and local sales and compensating use taxes.

Parking, garaging or storing motor vehicles in Manhattan

The Tax Law was amended to extend the special requirements relating to the services of parking, garaging or storing motor vehicles at facilities located in New York County (i.e., Manhattan) until November 30, 2004. The special requirements were set to expire on November 30, 1999. The special requirements imposed in 1992 included additional recordkeeping and reporting requirements (i.e., Schedule N-ATT), as well as authorization for periodic onsite inspections (walkabouts) by the Commissioner or his agents.

The amendment was effective immediately.

(See, Tax Law, Section 1142-A(a).)

Fund or trust established for the victims or targets of Nazi persecution

The Tax Law was amended to exempt from all State and local sales and use taxes amounts received from the designated or qualified settlement fund, or grantor trust, that is established for the benefit of victims or targets of Nazi persecution that took place by or in the Swiss Confederation (i.e., Switzerland). See www.swissbankclaims.com for the official web site for the *Holocaust Victim Assets Litigation* against Swiss banks and other Swiss entities.

The amendment was effective immediately.

(See, Tax Law, Section 13(b).)

Clothing and footwear

The new legislation amended the effective date of the permanent exemption from State sales and use taxes on clothing and footwear costing less than \$110 from December 1, 1999, until March 1, 2000. Provisions have also been made in the new legislation to provide counties and cities with the flexibility to opt into, and out of, this exemption.

The Tax Law was also amended to provide temporary exemptions from State sales and use taxes for the period commencing September 1, 1999, and ending September 7, 1999, and for the period commencing January 15, 2000, and ending January 21, 2000, on clothing and footwear costing less than \$500 per article of clothing or per pair of shoes or other articles of footwear. The exemptions also apply to items that are used or consumed to make or repair exempt clothing which become a physical component part of such clothing. The temporary exemptions do not apply to the taxes imposed in New York City by Section 1107 of the Tax Law or to the local taxes imposed pursuant to the authority of Article 29 of the Tax Law, unless counties or cities elect either or both of the exemptions, as provided for in the new legislation.

This topic is the subject of Technical Services Bureau Memoranda: *Temporary Sales and Use Tax Exemptions on Clothing and Footwear*, TSB-M-99(3)S.

(See, Tax Law, Section 1210(a)(1), (d) and (k), regarding counties and cities opting into, and out of, the exemption; and Tax Law, Section 1115(a)(30-a) regarding these temporary exemptions.)

Food and drink sold through vending machines

The Tax Law was amended to provide that the existing exclusion from the sales tax on food and drink sold in or by restaurants, taverns, other establishments or by caterers for certain sales made through coin-operated vending machines also includes sales made through machines that are operated by currency, credit cards and debit cards.

The amendment takes effect December 1, 1999.

(See, Tax Law, Section 1105(d)(i)(3).)

Nassau County additional tax rate extension

Section 1210 of the Tax Law was amended to extend the authorization of Nassau County to impose its sales and compensating use taxes at the additional statutory rates until January 31, 2001. This authority was set to expire on December 31, 1999. Other chapters of the Laws of 1999 have been enacted to extend the authority of certain other counties and cities to impose additional rates of sales and use taxes.

Services relating to parts, tools, supplies, machinery and equipment

The Tax Law was amended to eliminate all local sales and use taxes on the services of installing, repairing, maintaining and servicing (i) the parts, tools, supplies, that are exempt under Section 1105-B, and (ii) machinery and equipment that are exempt from tax under Section

1115(a)(12) of the Tax Law, thereby conforming the treatment of these services to that of the State and New York City.

Section 1105-B of the Tax Law exempts from sales and use tax, parts with a useful life of one year or less, tools and supplies that are used or consumed directly and predominantly in the production, for sale, of tangible personal property and certain utility services, by manufacturing, processing, generating, assembling, refining, mining or extracting. This section also exempts tools and supplies that are used in or on certain telephone central office equipment, station apparatus and comparable telegraph equipment. Section 1115(a)(12) of the Tax Law exempts from tax, machinery and equipment that are used or consumed directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, and telephone central office equipment or station apparatus or comparable telegraph equipment that are used directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication or in receiving, amplifying, processing, transmitting and retransmitting telephone or telegraph signals, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus.

The amendments take effect on March 1, 2000.

(See, Tax Law, Sections 1105-B, 1108(b)(1) and 1210(a)(1).)

Live dramatic or musical arts performances

The Tax Law was amended to expand the exemption from State and local sales and use taxes for certain items of tangible personal property and certain services that are used directly and predominantly in producing live dramatic or musical arts performances. The performances must take place in a theater or other similar place of assembly (but not in a roof garden, cabaret or other similar place) with a seating capacity of at least 100 chairs that are rigidly anchored or fixed in place so as to prevent movement. Prior to this amendment, the exemption applied only in New York City to the taxes imposed by Section 1107 of the Tax Law. (See, *New Local Sales and Use Tax Exemption in New York City for Certain Theatrical Productions*, TSB-M-98(1)S.)

The term *place of assembly* is defined with reference to Sections 27-232 and 27-255(a) of the New York City Administrative Code (as in effect on January 1, 1998), whether or not the place of assembly is located in New York City. In general, a place of assembly means an enclosed room or space or an outdoor space in which people gather for religious, recreational, educational, political or social purposes or which is designed for use by persons gathered for any of such reasons, but excluding such spaces in dwelling units. The place of assembly must have a stage in which scenery and scenic elements are used; and the place must keep copies of approved seating plans on the premises, as described in Section 27-528 of the New York City Administrative Code (as in effect on January 1, 1998). Also, notwithstanding the 75 person indoor capacity requirement in the Code, the place of assembly must have 100 or more chairs that are rigidly affixed to the construction or

fixed in place so as to prevent movement in any direction. Likewise, the statute explicitly excludes performances in a roof garden, cabaret or other similar place.

Tangible personal property will be exempt from tax only where it can be shown at the time of purchase that the production in which the property will be used will be presented to the public at least five times per week for a period of at least two consecutive weeks. It must also be shown at such time that the content of each of the performances will be the same and that there will be a charge for admission to the performances. The exemption will not apply to tangible personal property that is permanently affixed to, or that becomes an integral component part of, a structure, building or land. Property exempt from tax would include, for example, scenery and scenic elements, costumes, as well as lighting or sound equipment purchased for the performance provided that such equipment is not installed in the building where the performance is to occur.

Services described in paragraphs (2) and (3) of Section 1105(c) of the Tax Law rendered with respect to the exempt tangible personal property described above will also be exempt from State and local sales and use taxes. These services generally consist of producing, fabricating, processing, printing and imprinting tangible personal property furnished by the person requesting the service; and installing, maintaining, servicing and repairing tangible personal property.

The amendments take effect on March 1, 2001.

(See, Tax Law, Section 1115(x). Conforming amendments have also been made in Sections 1107 and 1210(a)(5) of the Tax Law.)

Use tax on property manufactured, processed or assembled by the user

The Tax Law was amended to change, in certain circumstances, the base on which the compensating use tax is imposed by Section 1110(a)(B)(i). This amendment applies to the use tax on tangible personal property manufactured, processed or assembled by the user, where the user also sells the same kind of property in the regular course of business. The amendment only applies where the item of property is used by the manufacturer, processor or assembler on its own premises and solely in the conduct of its own business operations. The item must also retain its characteristics as tangible personal property when used. The amendment does not apply to tangible personal property given as a gift, as a sample or as part of an employee's compensation.

The new base on which the tax will be computed is the cost of the tangible personal property (for example, raw materials) used to manufacture, process or assemble the item used. Prior to the amendment, the base for the tax in such case was the price at which the person sold like property in the regular course of business.

The new rule will not affect Section 1110(e) of the Tax Law regarding the value added by a fabricator/installer to property that is fabricated and then installed to the specifications of an addition or capital improvement to real property, property or land because the new rule applies only

to items that retain their character as tangible personal property.

The amendment takes effect on March 1, 2001.

(See, Tax Law, Section 1110(c).)

Farming

The Tax Law was amended to expand the exemptions from State and local sales and use taxes for certain property and services used in farm production and to add the following three new definitions:

Farming. The term *farming* includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animal, graping, truck and tree farming; ranching; operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural, floricultural or silvicultural commodities; operating orchards; raising, growing and harvesting crops, livestock and livestock products, as defined in subdivision two of section three hundred one of the Agriculture and Markets Law; and raising, growing and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

Farm building materials. Tangible personal property for use in erecting a structure or building used in farming or adding to, altering or improving real property, property or land used in farming, as the terms real property, property or land are defined in the Real Property Tax Law, or for use in maintaining, servicing or repairing such real property, property or land, where such tangible personal property becomes an integral component part of such structure, building or real property.

Non-qualifying farm building materials. (i) Farm building materials for use directly in electrical, electronic, plumbing, heating, ventilating, air conditioning, fluid or solid material delivery or transport systems or any other mechanical or electro-mechanical system, of whatever nature, in a building or structure used in farming; and (ii) machinery or equipment which, when installed, will constitute an addition or capital improvement to real property, property or land used in farming, as the terms real property, property or land are defined in the Real Property Tax Law; provided, however, that tangible personal property for use in erecting, adding to, altering or improving a silo used in farming to make and store silage on a farm which becomes an integral component part of such a silo shall not be non-qualifying farm building materials; provided, further, that farm building materials used in electric fences used in farming shall not be non-qualifying farm building materials.

The new definition of farming was derived in part from the “farming” exemption found in Section 1115(a)(6) of the Tax Law. This new definition also codified existing administrative rulings

and practices by clarifying that aquaculture (i.e., the cultivation of water products such as fish or shellfish), silviculture (i.e., the cultivation of forest products) and raising, growing and harvesting other woodland products (such as Christmas trees) are included within the scope of farming.

The new definition of non-qualifying farm building materials excludes from its coverage (i.e., continues the exemption for) tangible personal property used in the construction of a farm silo. The language concerning farm silos was also taken from Section 1115(a)(6) and was intended to preserve this previously existing class of exempt materials. Further, farm building materials used in electric fences used in farming are also excluded from the definition of non-qualifying farm building materials. Non-qualifying farm building materials include material "*for use directly in*" electrical, etc. systems. The phrase "for use directly in" is intended to make it clear that only the system, or replacement or repair parts for the system, are to be excluded from the category of qualifying farm materials. For example, replacement pipes in a plumbing system or couplings used in repairing such a system would be taxable, but lumber used to support the parts of the plumbing system which are replaced or repaired would qualify for the exemption.

Section 1105(c)(5) of the Tax Law imposes tax on the services of maintaining, servicing or repairing real property, property or land. This section was amended to exclude from tax services rendered directly with respect to real property, property or land used or consumed directly and predominantly (i.e., more than 50 percent) in the production of tangible personal property, for sale, by farming. However, services rendered with respect to real property, property or land that consists of, or is constructed from, non-qualifying farm building materials, remain taxable. Likewise, such services rendered in conjunction with non-qualifying farm building materials that are transferred to the purchasing farmer will also remain taxable.

Section 1115(a)(6) of the Tax Law exempts from tax tangible personal property used or consumed directly and predominantly in the production, for sale, of tangible personal property by farming. This section was also amended to reflect these new definitions. Section 1115(a)(6) as amended provides an exemption for tangible personal property, whether or not incorporated into a building or structure, but not including non-qualifying farm building materials. This expands the exemption to include farm fencing and other farm building materials, but not including non-qualifying farm building materials.

Section 1115(a)(6) was further amended to provide that motor vehicles used directly and predominantly in the production phase of farming may be purchased exempt from tax at the time of purchase upon presentation of a properly completed exemption certificate. Prior to this amendment, the purchaser of the motor vehicle was required to pay tax and apply for a refund or credit after having documented that the vehicle was used directly and predominantly in the production phase of farming.

The exemptions from tax in Sections 1115(a)(15) and (16) of the Tax Law were also amended in relation to the new definitions. When these amendments take effect, Sections 1115(a)(15) and (16) will exempt tangible personal property sold to a contractor, subcontractor or repairman (i) for use in erecting a structure or building or adding to, altering or improving real

property, property or land, or (ii) for use in maintaining, servicing or repairing real property, property or land, provided that, in either case, the tangible personal property is used directly and predominantly in the production phase of farming, becomes an integral component part of the structure, building or real property and is other than non-qualifying farm building materials.

The amendments take effect on March 1, 2001.

(See, Tax Law, Sections 1101(b)(19), (20), (21); 1105(c)(5); 1115(a)(6), (15) and (16). Sections 1108(b)(1) and 1210(a)(1) of the Tax Law were also amended to conform to the new definitions and to delete the descriptions of farming contained in these sections.)

Telecommunication services and Internet access services

The Tax Law was amended to provide new exemptions from State and local sales and use taxes for machinery and equipment used or consumed directly and predominantly to upgrade cable television systems so as to allow for the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale. This exemption includes parts with a useful life of one year or less, tools and supplies that are used in connection with the exempt machinery and equipment.

The amendment also exempts from tax machinery and equipment sold to an entity primarily engaged in providing telecommunication services for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of Internet access services for sale. This exemption will also include parts with a useful life of one year or less, tools and supplies used in connection with the exempt machinery and equipment.

The services of installing, maintaining, servicing and repairing the exempt property will also be exempt from State and local sales and use taxes.

For purposes of the new exemptions, the term *telecommunication services* will have the same meaning as defined in Section 186-e(g) of the Tax Law. See, *1995 Legislation Affecting Telephone and Telegraph Businesses and Other Providers of Telecommunication Services*, TSB-M-95(3)C.

The amendments take effect March 1, 2001.

(See, Tax Law, Sections 1115(a)(12-a) and 1105(c)(3)(x).)

Computer system hardware used to design and develop Internet web sites

The Tax Law was amended to expand the current exemption from State and local sales and use taxes for computer system hardware used or consumed directly and predominantly in designing

and developing computer software for sale, to include hardware used in providing the service, for sale, of designing and developing Internet web sites.

The amendment takes effect March 1, 2001.

(See, Tax Law, Section 1115(a)(35).)